

REMARKS

In response to the Final Office Action, Applicant herewith files a Request for Continued Examination and respectfully requests reconsideration. Claims 1-112 are pending in the application. However, of these, claims 3-7 and 9-92 are withdrawn from consideration at this time. Therefore, claims 1, 2, 8 and 93-112 are under examination. Those claims have been rejected. Claims 1, 8, 93 and 106 have been amended. The amendment is fully supported by the disclosure in the specification. (See, Specification, page 9, lines 5-6).

Claim Rejections – 35 USC § 103

Claims 1, 2, 8 and 93-112 have been rejected as obvious over Buist in view of Fenster. Applicants strongly disagree with (a) the propriety of the combination and (b) that the combination would result in the claimed invention.

Buist merely teaches trading on an electronic exchange. The Examiner correctly notes that Buist does not disclose paying a royalty on the transaction (or any other form of remuneration) to the entity that issued the security that is the subject of the transaction.

Fenster, however, does not compensate for the deficiencies of Buist. Fenster merely teaches a very unique and highly restrictive form of housing (for people) that requires “shared cooking, dining, and childcare facilities. . .” (Fenster, at *1). The shares in the cooperative unit of Fenster [“Fenster shares,” hereinafter] are distinct from shares of securities issued and traded on any of the national or international securities exchanges. Fenster shares are a form of representation of ownership of a specific asset; they do not represent ownership of an *equity share* of the issuer. There is no indication, for example, that the holder of a Fenster share will receive, upon selling his or her share, anything other than the value of that individual’s housing unit (let’s call it an apartment), irrespective of the overall value of the Fenster housing project. For example, if the owner of apartment A experiences a 10% increase in the value of apartment

A, he/she will receive that profit on sale despite the fact that the Fenster housing project may have increased 20% overall or on average, or may have declined 20% overall or on average (perhaps apartment A is a better than average apartment or a worse than average apartment). By contrast, if the common stock of XYZ Corp. rises in value 20%, any holder of XYZ stock who held the stock during that time receives the 20% increase on sale (less any costs of sale).

Furthermore, two Fenster apartments with the same floor plan will be assigned the same number of shares by a housing co-op. Yet, the value of these residential units may vary due to the apartments' locations, conditions, improvements made by previous owners, or general preference of buyers. Thus, Fenster apartments are not susceptible to trading on electronic exchanges as fungible units (which is what equity security shares are, of course). They require personal evaluation of an asset being purchased; not the evaluation of an equity interest in the overall housing community. Of course the amenities and features of the overall housing community affect the values of its constituent apartments, but that is wholly irrelevant.

The Office Action states that the fact that Fenster shares are, as previously argued, linked to a specific asset and not to a share of the profits of the issuer is of no weight because it is not recited in the rejected claims, relying on *In re Van Geuns* for an instruction not to read limitations from the specification into the claims. However, the Examiner misconstrues the analysis. Applicant does not seek to read into any claim a limitation not expressed. Rather, the Examiner simply has not given the claim language its proper scope and interpretation. A Fenster share simply is not "a security in an entity." Applicant's point is that a Fenster share does not have the characteristics required of a security in an entity. It does not entitle the owner, for example, to a share of the equity of the Fenster housing project. This point is redundantly amplified in the amendment set forth above, wherein it is stated that "said security comprises fungible shares representing an equity interest in the entity," as Fenster units are not fungible shares in the housing project.

In addition, Fenster shares may not be divided or freely traded. Specifically, co-operative housing communities such as Fenster require the purchaser to obtain approval from the community management prior to purchasing Fenster shares. Further, Fenster specifically describes multiple restrictions on alienation imposed by the co-housing community that would

not be acceptable for nationally traded securities. Fenster, in fact, teaches *away* from the present invention by suggesting that a personal familiarity of the co-housing management with the purchaser is one of the main requirements for co-housing. The claims now expressly recite the previously inherent characteristic of share fungibility. That is, a buyer need not distinguish the features of one share in a security from the next share in the same security; that is an inherent characteristic of the public equities markets, without which they probably could not function, and it is manifestly a different type of circumstance from that in which every item that may be purchased is unique.

The currently pending claims, moreover, are directed to computer systems having “means for consummating a transaction between a first party and a second party, [wherein said parties are] distinct from the issuing entity.” (See e.g., Claim 106). Such transaction relates, contrary to Fenster, to a “security [which] comprises fungible shares representing an equity interest in the entity.” (See, Claims 1, 8, 93 and 106). Manifestly, the Examiner impermissibly equates shares in a housing unit with shares of securities traded on an open market. Consequently, Fenster discusses only non-analogous prior art and should be discarded from consideration. *See, e.g., In re Clay.*

Moreover, the proposal to marry Buist and Fenster to arrive at the claimed invention is an improper fabrication with no legal justification. No suggestion or motivation to combine the references is found in the references themselves or in the knowledge of those ordinarily skilled in the art of securities trading or of the art of computer systems to support securities trading (so-called electronic exchanges). No such individual would have been motivated to look towards co-housing projects for ideas to modify Buist or any other securities trading system. The Office Action ignores the requirement to focus on the person of ordinary skill in the art.

Moreover, the combination that would result, if effected, is a completely unworkable securities exchange, where each transaction would require approval by the issuer of the security (per Fenster’s requirement of centralized approval) (and thus require personal familiarity of the issuer with the buyer) and personal familiarity of the buyer with the unique qualities of shares being purchased.

Thus, not only is there no motivation to even support a *prima facie* case for obviousness, but also the combination suggested by hindsight would not be the claimed invention.

Claims 109-112 have been rejected over a combination of Buist and Fenster, further in view of Bowman-Amuah. These claims all depend from claim 6, however, and the allowability of claim 6 is established above. Thus, no more need be said regarding these claims.

The obviousness rejection therefore should be withdrawn.

Non-Elected Claims

A number of claims were restricted out of the application, and withdrawn from consideration. Claim 1 and other allowable independent claims are believed to be generic as to all or some of the withdrawn claims. As Applicant's election was made with traverse, preserving Applicant's rights, those withdrawn claims should now be examined and allowed.

CONCLUSION

A Notice of Allowance is respectfully requested. The Examiner is requested to call the undersigned at the telephone number listed below if this communication does not place the case in condition for allowance.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicant hereby requests any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 23/2825.

Respectfully submitted,
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